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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Billed Party Preference )  
for 0+ InterLATA Calls )  
 )  
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CC Docket No. 92-77

To: The Commission

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION  
ON PROPRIETARY CALLING CARDS AND 0+ ACCESS

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June 2, 1992

No. of Copies rec'd 072  
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ON PROPRIETARY CALLING CARDS AND 0+ ACCESS**

The Competitive Telecommunications Association ("CompTel") hereby submits these comments in response to the Commission's request for information concerning its policy toward the use of "proprietary" calling cards and 0+ access. CompTel applauds the Commission for conducting this portion of the docket on an expedited basis and urges quick agency action to minimize the hardship to consumers and to the competitive marketplace caused by the proliferation of proprietary 0+ cards.

**SUMMARY**

Proprietary calling cards used on a 0+ basis are antithetical to the public interest. Such cards confuse and frustrate consumers who discover that their cards are usable at some locations but not at many others. In particular, AT&T's proprietary CIID card rollout has created significant amounts of consumer confusion, has substantially increased

the costs for its competitors (IXCs and OSPs), and threatens to re-monopolize the operator services market. Stated simply, a proprietary 0+ card issued by a dominant carrier and honored by the LECs is inconsistent with the maintenance of competition in the 20 percent of the interstate long distance market represented by operator-assisted calling.

Therefore, CompTel strongly urges the Commission to ensure that all IXCs and OSPs have the ability to bill and validate all calling cards usable on a "0+" basis. AT&T should not be permitted to, in effect, block access to 0+ calling by withholding billing and validation information for 0+ calling cards. Having just directed aggregators and manufacturers to spend billions of dollars to unblock 10XXX access, it would be astonishing if the Commission were now to permit AT&T to impose its own form of blocking on 0+ dialing through the use of proprietary cards. CompTel does not oppose the issuance of proprietary calling cards, but believes that they should be restricted to use in access code calling, as are the proprietary calling cards of every other IXC that issues cards.

**I. The Record Already Before the Commission in this Docket Demonstrates that AT&T's Proprietary 0+ Card Is Not in the Public Interest**

The Commission has included in this docket the comments filed in response to CompTel's Emergency Motion in Docket 91-115, which requested an emergency, interim order halting the

issuance of additional AT&T CIID cards and mandating access to validation data for existing cards.<sup>1</sup> The comments filed in that docket demonstrate an immediate need for action by the Commission to protect consumers and the public interest in competition from the harms of proprietary 0+ cards.

AT&T's CIID card policies were opposed by the vast majority of commenters -- including Regional Bell Operating Companies ("BOCs"), competitive interexchange carriers ("IXCs") and OSPs. CompTel will not burden the Commission by repeating in detail the information already provided by those comments. Two salient points, however, bear repeating.

First, AT&T's use of proprietary 0+ cards harms consumers. AT&T deceptively induced millions of consumers to return, discard, or simply stop using their joint AT&T/LEC calling cards. As a result, consumers unwittingly threw away calling cards which provided universal 0+ access. These consumers then became confused when they discovered that their "replacement" card was not valid for 0+ dialing at all locations where their previous cards had been honored. The record shows that AT&T's action created and then capitalized

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<sup>1</sup> Competitive Telecommunications Association, et. al, Emergency Motion for an Interim Order Requiring AT&T to Cease Further Distribution of "Proprietary" CIID Cards and Permit Validation and Billing of Existing Cards Pending a Final Decision in this Docket, CC Docket 91-115 (filed December 20, 1991).

on this confusion, allowing it to consolidate its dominant position in the public telephone presubscription market.<sup>2</sup>

Second, proprietary 0+ cards harm competition in operator services. Consumers unfairly blame both the OSP or IXC and the aggregator for "refusing" their CIID card, unaware that AT&T, not the OSP, is responsible for the OSP's inability to accept the card. As a result, OSPs and IXCs lose consumer goodwill and aggregator customers, who, faced with customer dissatisfaction, decide (to paraphrase an AT&T advertisement employed in a different context), "It's just not worth it." In addition to losing aggregator customers, OSPs and IXCs incur local access charges, validation query fees, and the expense of live operator intervention whenever an attempt is made to use the AT&T CIID card on an OSP or IXC's network. These costs are substantial, unrecoverable, and threaten the continued viability of many OSPs and IXCs.<sup>3</sup>

Proprietary 0+ cards can benefit only the dominant carrier in a market, because the cards can be used only when the issuing carrier is the presubscribed carrier for the telephone from which the call is placed. For all carriers

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<sup>2</sup> See, e.g., Bell Atlantic's Response to CompTel's Motion, at 2-3, CC Docket No. 91-115 (filed Feb. 10, 1992); Comments of Southwestern Bell Tel. Co., at 7, CC Docket No. 91-115 (filed Feb. 10, 1992).

<sup>3</sup> See e.g., CompTel Emergency Motion at 15-18; Joint Comments of Zero Plus Dialing, Inc., et. al., at 8, CC Docket No. 91-115 (filed Feb. 10, 1992); Comments of Intellicall, at 11, CC Docket No. 91-115 (filed Feb. 10, 1992).

except AT&T, consumers would quickly discard a proprietary 0+ calling card because it would be invalid at a substantial majority of public telephone locations.<sup>4</sup> For AT&T, however, its approximately 75 percent share of presubscribed aggregator locations renders a proprietary 0+ card a viable option. Consumers will notice no difference at payphone locations where AT&T is the presubscribed carrier. Only when the telephone is presubscribed to another carrier is the consumer denied the convenience of 0+ dialing. Thus, AT&T takes little risk in issuing a proprietary 0+ card, calculating correctly that consumers will blame OSPs and IXC's for calls they must turn away. For competitive OSPs and IXC's, however, the impact is devastating: they must turn away many calls on phones presubscribed to them and absorb all the costs of those uncompleted calls. In addition, the presence of tens of millions of AT&T-only cards puts substantial pressure on public telephone locations to switch to AT&T, thereby consolidating AT&T's control of the market.<sup>5</sup>

The Commission noted these problems itself in tentatively concluding that billed party preference would serve the public interest. Specifically, the Notice stated

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<sup>4</sup> MCI is the second largest IXC in the operator services market, with an estimated market share of 10 percent. An MCI proprietary 0+ card, then, would work at only 1 in 10 locations for 0+ dialing. Other carriers would have even lower percentages.

<sup>5</sup> See e.g., Comments of Integretel, Inc., at 4, CC Docket No. 91-115 (filed Feb. 10, 1992); Comments of MCI at 2 (filed Feb. 10, 1992).

that AT&T is able to pay lower commissions than its competitors but still be more attractive to aggregators because it carries a larger volume of commissionable traffic. This disparity based on dominance will grow larger "if AT&T increasingly migrates customers to proprietary calling cards that other OSPs cannot validate."<sup>6</sup> Thus, the Commission already has recognized that, under the existing system, AT&T holds a substantial advantage which proprietary O+ calling cards make even more powerful.

The Commission has the legal authority to regulate telephone calling card practices under both Title II and Title I of the Communications Act. Under Title II, the Commission is mandated by Section 201 of the Act to ensure that the "practices, classifications and regulations for or in connection with [interstate communication] service shall be just and reasonable."<sup>7</sup> Clearly, the justness and reasonableness of a carrier's calling card practices are governed by Section 201.

Moreover, the Commission has already found that Section 202 of the Act, prohibiting unreasonable discrimination by common carriers, applies to AT&T's calling card discounts.<sup>8</sup> Certainly, Section 202 applies with equal force to other

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<sup>6</sup> Notice at ¶ 20.

<sup>7</sup> 47 U.S.C. § 201(b).

<sup>8</sup> AT&T Communications, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 3380, 3537, 3542 and 3543, DA-1583, (Dec. 19, 1991).

calling card practices determined to be discriminatory. Finally, in Cincinnati Bell, the Commission found that Title II governed the provision of line number cards, RAO number cards and CIID cards converted from RAO number cards.<sup>9</sup> Thus, the Commission has ample jurisdiction to regulate calling card practices under Title II of the Act.

In the alternative, the Commission could regulate calling cards under Title I of the Act. The Communications Act grants the Commission authority over "all instrumentalities, facilities, apparatus and services . . . incidental to [interstate or foreign] transmission."<sup>10</sup> At a minimum, calling cards are "instrumentalities" or "services" incidental to the carrier's transmission services.<sup>11</sup>

## **II. Proprietary 0+ Cards are Contrary to the Commission's Unblocking Policies**

In enacting the Telephone Operator Consumer Services Improvement Act of 1990, Congress concluded, "Consumers must

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<sup>9</sup> Cincinnati Bell Tel. Co., Final Order ¶ 24, FCC 91-117 (rel. May 24, 1991).

<sup>10</sup> 47 U.S.C. § 153(a).

<sup>11</sup> The Commission also could regulate calling cards under its "ancillary" jurisdiction under Title I. The Commission has ancillary jurisdiction if "such regulation would 'be directed at protecting or promoting a statutory purpose.'" Detariffing of Billing and Collection Services, 102 FCC 2d 1150, 1170 (1986) (citations omitted). There is no question that restricting proprietary 0+ calling cards would promote the maintenance of just, reasonable and nondiscriminatory competitive practices in the interstate operator services market.

have . . . the ability to choose their desired carriers and therefore must be permitted to reach these carriers by dialing the access code associated with that carrier."<sup>12</sup> This premise played an important part in the Commission's decision to mandate unblocking of 10XXX codes, which the Commission concluded was "the most efficient access method for consumers to use in reaching their preferred operator service providers."<sup>13</sup>

Blocking of 10XXX codes is not the only means of blocking a consumer's access to competing IXC's, however. AT&T's practice of withholding validation and billing data for its CIID cards -- which it instructs its customers to use on a 0+ basis -- blocks these customers from using their 0+ calling card with the presubscribed carrier, unless it is AT&T. Customers who would prefer to use non-AT&T presubscribed carriers (and the convenience of 0+ dialing) are denied their choice just as effectively as they were when aggregators previously blocked access to IXC's by blocking 10XXX codes. AT&T has simply blocked access to essential billing information instead of blocking access to lines. A policy of "0+ in the public domain" would "unblock" this access and give consumers the freedom to make their own

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<sup>12</sup> S.Rep. No. 439, 101st Cong., 2d Sess. 17 (1990).

<sup>13</sup> Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order, 6 FCC Rcd. 4736, 4738 (1991).

decisions in choosing between the convenience of 0+ dialing and the designation of a specific IXC.

The great irony in this proceeding is that at the insistence of AT&T and the Congress, the Commission recently adopted unblocking rules for aggregators which will cost billions of dollars to implement.<sup>14</sup> Despite the enormous expense required of aggregators and payphone owners, the policy was found to be necessary to protect the ability of consumers to reach AT&T from locations where another OSP was the presubscribed carrier. Within months of the enactment of those rules, AT&T introduced its own version of blocking -- proprietary 0+ calling cards. To the OSPs and aggregators who were excoriated for depriving consumers of the ability to reach other carriers, it seems amazing that the Commission is even willing to consider permitting the continuation of proprietary 0+ cards. Nor can this apparent irregularity of treatment be explained as deference to consumer choice.

AT&T cannot justify its withholding of validation and billing data for these cards on the ground of assuring consumers that they will access only the AT&T network. The record on the CompTel Emergency Motion details AT&T's deceptive practices in convincing consumers that "government regulation" required replacement of their non-proprietary

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<sup>14</sup> It has been estimated that the upgrade costs for hotels alone would be in excess of \$600 million for new equipment. Comments of the American Hotel and Motel Association at 16, CC Docket 90-313 (filed September 7, 1990).

card and that those cards will no longer work and should be destroyed. The result of this doubly deceptive campaign is that millions of consumers who want the convenience of 0+ dialing are now denied that ability. Adding insult to injury, AT&T now justifies the continuation of its proprietary 0+ card on the basis that these consumers have chosen to utilize such a card. Having rigged the choice -- by telling them that the CIID card was simply a "replacement" for their existing cards -- AT&T now seeks to claim a public policy mandate from its deception. The longstanding Commission principle that wrongdoers not profit from their unlawful actions must apply here.<sup>15</sup>

Moreover, the harms of AT&T's proprietary 0+ card are not counterbalanced by any significant consumer benefit. Sufficient mechanisms already exist for consumers to identify the presubscribed carrier and to dial five digits if they wish to select AT&T instead. In recent years, the Commission has implemented numerous requirements -- including posting, branding, rate quotes on request, and 10XXX unblocking -- intended to ensure that consumers who desire to access only certain carriers have the information and ability necessary to exercise that choice. Indeed, AT&T has heavily promoted its "10ATT" (10288) access code for callers wishing to use only AT&T for their calls. Consumers, therefore, do not need

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<sup>15</sup> Second Thursday Corp., 22 F.C.C.2d 515 (1969).

AT&T's "proprietary" validation policies to provide them with access to AT&T.<sup>16</sup>

### **III. Proprietary 0+ Cards Are Contrary to the Commission's Tentative Conclusions on Billed Party Preference**

In the Notice on billed party preference, the Commission bases its tentative conclusions favoring adoption of that system on the "user friendly" benefits it is said to provide. The Notice finds public detriments in consumer confusion and frustration caused by "call blocking, [consumers'] mistaken assumptions as to which carrier will handle their call when they use a particular calling card, and by the need to use access codes, and to know when to use them."<sup>17</sup> Many of these same consumer obstacles are presented by proprietary 0+ cards.

#### **Proprietary 0+ calling cards**

- block 0+ access to the presubscribed carrier,
- require the use of access codes where the issuing carrier is not the presubscribed carrier,
- require knowledge in when to use access codes, and
- create a mistaken impression that 0+ dialing is universally available.

In contrast, the principal bases for the Commission's tentative conclusions favoring billed party preference were the consumer's access to universal 0+ dialing and the ability

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<sup>16</sup> Indeed, the primary effect of AT&T's validation policies is to require callers to use the AT&T access code, even where callers would prefer to use the presubscribed carrier.

<sup>17</sup> Notice at ¶ 14.

to choose the IXC carrying the call. Given the Commission's assessment of the public importance of those conveniences, and the fact that billed party preference is still years from implementation, it would seem capricious to permit an interim step backward through the countenance of proprietary 0+ calling cards.

#### **IV. Responses to the Commission's Specific Questions**

In its Notice, the Commission listed several specific questions for commenters to address. In an effort to respond in a way that is most useful to the Commission, CompTel supplements its comments, provided herein and in Docket 91-115, with responses to these specific questions.

1. How and by whom the choice between a proprietary access code card and a nonproprietary 0+ card should be made.

The choice should be left to the consumer to decide whether to carry a 0+ card providing universal access or a proprietary card requiring access code dialing. This would permit the consumer to weigh the relative advantages and disadvantages of each card. Of course, the card-issuing IXC must provide sufficient information so that the consumer understands the difference between proprietary and nonproprietary calling cards and can make an informed choice between them. In no case, however, should proprietary 0+ cards be permitted.

2. How IXCs would distinguish and screen proprietary and nonproprietary card calls.

Proprietary card calls should be limited to access code calling. This way, IXCs (and consumers) can easily distinguish proprietary and nonproprietary cards. Further, this would channel call attempts using the proprietary card directly to the issuing IXC and protect other IXCs from the expense of unsuccessful validation attempts for proprietary cards.

3. Whether carriers should be obligated merely to instruct proprietary cardholders to dial access codes, or whether they should also be required to reject 0+ calls by customers using proprietary calling cards.

In order to maintain clear distinctions for the consumer between proprietary and nonproprietary calling cards, IXCs should be required to reject all attempts to use a proprietary card on a 0+ basis. This way, consumers can easily identify proprietary calls by the access code requirement, in much the same way that consumers identify interLATA calls by the need to dial "1" before the number. Without a universal requirement that proprietary calls be placed through access codes, consumers will continue to confuse proprietary and nonproprietary cards and OSPs and IXCs will continue to incur the expenses of invalid 0+ call attempts.

4. What information would have to be made available to enable OSPs to carry and bill for nonproprietary 0+ calls.

Validation of 0+ cards requires only a database response of valid or invalid. Billing requires that LECs or some

third party be given translations of calling card numbers into telephone numbers for billing.<sup>18</sup> Proprietary customer information need not be supplied to competing OSPs or IXC's.

5. The impact the above-described proposal would have on consumers.

As described previously in these comments, a policy of universal access to billing and validation data for all 0+ calling cards will maximize consumer choice and reduce harm to competition in the operator services market.

6. The impact this proposal might have on the costs and benefits of billed party preference or the timeliness with which it could be implemented.

Universal access to billing and validation data for 0+ calling cards will provide consumers with the convenience of 0+ dialing, while not increasing the costs of a transition to billed party preference. Moreover, precluding the use of proprietary 0+ calling cards will preserve competition in operator services while the Commission considers the merits of a billed party preference system.

### CONCLUSION

Proprietary 0+ calling cards confuse consumers and harm competitive providers of interexchange operator services. The only entity that proprietary 0+ cards benefit is AT&T.

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<sup>18</sup> Ultimately, BNA is also necessary to send the bill to the customer. In situations where the LEC provides billing services, however, the LEC already has this information by virtue of its provision of local telephone service.

Such cards channel revenue to AT&T from its competitors and permit it to consolidate its dominant position in the public telephone presubscription market. In contrast, a policy of "0+ in the public domain" permits consumers to easily distinguish proprietary and nonproprietary calling cards, preserves universal access to 0+ dialing, and prevents competition in operator services from being extinguished before the Commission can consider the merits of its billed party preference proposal.

For these reasons, CompTel urges the Commission to require that IXC's provide other IXC's, OSP's, and billing agents with the ability to validate and bill for calling cards used on a 0+ basis, and restrict use of proprietary calling cards to access code calling.

Respectfully submitted,

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June 2, 1992

CERTIFICATE OF SERVICE

I, Teresa C. Quint, a legal secretary at the law offices of Wiley, Rein & Fielding, hereby certify that on this 2nd day of June, 1992, copies of the foregoing "Comments of the Competitive Telecommunications Association on Proprietary Calling Cards and 0+ Access" were caused to be sent by U.S. first class mail, postage prepaid, to each of the parties on the attached service list.

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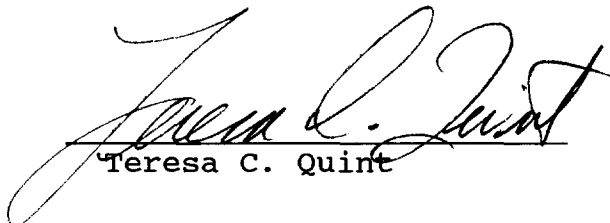
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